

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA**

**DREW A. MORRIS**

**v.**

**BRANDEIS UNIVERSITY**

**CIVIL ACTION  
NO. 99-2642**

**MEMORANDUM**

**Broderick, J.**

**October       , 1999**

Plaintiff Drew A. Morris ("Plaintiff" or "Morris"), brought suit against Defendant Brandeis University ("Defendant" or "Brandeis" or "the University"), a Massachusetts not-for-profit educational institution located in Waltham, Massachusetts, by filing a three-count complaint in the Court of Common Pleas of Philadelphia County alleging "Breach of Contract and Covenant of Fair Dealing" (Count One), "Negligent Misrepresentation" (Count Two), and "Breach of Fiduciary Duty" (Count Three). Plaintiff, a former student at Brandeis, claims that he was wrongly charged by the University with academic dishonesty during his senior year and that he was disciplined by the University in a manner which was unfair and which did not comply with Brandeis' own published policies. Plaintiff's complaint seeks compensatory and punitive damages as well as non-monetary relief.

Brandeis removed Plaintiff's complaint to this Court on May 21, 1999. In its notice of removal, Brandeis claims that this action is removable pursuant to 28 U.S.C. § 1441 as arising under the Court's diversity jurisdiction, 28 U.S.C. § 1332. Brandeis alleges that the parties are citizens of different states and the amount in controversy, exclusive of interests and costs,

exceeds \$75,000.

Presently before the Court is Plaintiff's motion to remand this action to the Court of Common Pleas of Philadelphia County. Morris asserts that this Court does not have subject matter jurisdiction over the instant action because the amount in controversy does not exceed the jurisdictional amount. Brandeis has filed a response thereto and Morris has filed a reply.

Also before the Court is the motion of Brandeis to dismiss for lack of personal jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(2), or, in the alternative, to transfer venue, pursuant to 28 U.S.C. § 1404(a). Plaintiff has asked this Court to defer a ruling on the jurisdictional and venue issues until the motion to remand has been decided and has filed a motion for leave to take discovery on the issues of jurisdiction and venue. Finally, Defendant has requested that this Court resolve its motion to transfer venue before permitting Plaintiff to take discovery on the issue of personal jurisdiction.

These motions and the responses thereto are presently before the Court. The Court will initially consider the motion to remand because resolution of it may make consideration of the other motions unnecessary. When, as here, the Court is faced with both a motion to remand and a motion to dismiss for lack of personal jurisdiction, the Court will ordinarily rule on the motion to remand where the motion to remand is straightforward and the motion to dismiss for lack of personal jurisdiction will require an inquiry into state law. See Ruhrgas AG v. Marathon Oil Co., \_\_ U.S. \_\_, 119 S.Ct. 1563, 1571-72 (1999).

For the reasons stated below, this Court has determined that Brandeis has not met its burden of demonstrating that the amount in controversy is greater than the jurisdictional amount. Therefore, the Court will grant Plaintiff's motion to remand this action to the Court of Common

Pleas of Philadelphia County and dismiss the motions relating to personal jurisdiction and venue as moot.

The following facts are taken from Plaintiff's complaint. Plaintiff was a student at Brandeis in the second semester of his senior year when, in May, 1997, he was disciplined by the University for academic dishonesty. After a hearing, the following sanctions were imposed: a failing grade in the history course in which the alleged misconduct arose; suspension until December, 1997, postponing his graduation for one year and making him ineligible to enroll in graduate school in the fall of 1997 as he had planned; and revocation of the honors previously awarded him for his history thesis. Compl. at ¶ 42. Plaintiff unsuccessfully appealed the imposition of these sanctions. Compl. at ¶ 43, 45.

Plaintiff's complaint alleges that the charges of academic misconduct were false. Plaintiff also alleges that the disciplinary process used was unfair and did not comply with the University's own published policies and procedures. Finally, Plaintiff alleges that the sanctions imposed on him were disproportionately harsh, based upon his past academic history, when compared with other students disciplined for similar offenses. Plaintiff's complaint, in each count, seeks the following relief:

- a. A reversal of the findings of the Hearing Board;
- b. The removal from and/or prevention of disclosure on his transcript, and from any records or the like, of any mention of the academic dishonesty accusation, hearing or sanctions;
- c. The removal from his transcript of the failure in the course and the substitution of a passing grade of "c", or, in the alternative, a complete deletion of any record of the course and any credits earned;
- d. The reinstatement of his award of Honors in History;
- e. The award of consequential damages for the delay of his entry into Law

- School and his following career in a yet undetermined amount;
- f. The award of punitive damages; and,
- g. The award of all costs and expenses, including reasonable attorneys' fees.

No specified amount of damages is claimed by Plaintiff in his complaint.

An action filed in state court is removable by the defendant if the District Court to which it is removed has original jurisdiction over the action. 28 U.S.C. § 1441. Brandeis attempts to invoke the Court's diversity jurisdiction pursuant to 28 U.S.C. § 1332 which provides, in relevant part: "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between - (1) citizens of different states;...." The burden of establishing the amount in controversy in a case removed from the state court rests on the defendant, as the party asserting federal jurisdiction. See Meritcare Inc. v. St. Paul Mercury Insurance Co., 166 F.3d 214, 222 (3d Cir. 1999); Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990); Steel Valley Auth. v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987), cert. dismissed sub nom., American Standard, Inc. v. Steel Valley Auth., 484 U.S. 1021 (1988). The removal statutes are to be strictly construed against removal. See Meritcare, 166 F.3d at 217. All doubts regarding the propriety of removal are resolved in favor of remand. See Steel Valley, 809 F.2d at 1010.

Generally, the propriety of the removal of a case to federal court is based on the facts as alleged in the complaint at the time the notice of removal is filed. Angus v. Shirley, 989 F.2d 142, 145 (3d Cir. 1993). A plaintiff cannot defeat federal jurisdiction by amending the complaint to reduce the amount in controversy. Id. A plaintiff's prayer for relief controls unless the defendant proves, to a legal certainty, that the plaintiff's claims are greater than the amount in controversy requirement. See Johnson v. Costco Wholesale, No. Civ. A. 99-cv-3576, 1999 WL

740690 at \*2 (E.D.Pa. Sept. 22, 1999); International Fleet Auto Sales, Inc. v. National Auto Credit, No. Civ. A. 97-cv-1675, 1999 WL 95258 at \*4 n.7 (E.D.Pa. Feb. 22, 1999) (citing Meritcare Inc. v. St. Paul Mercury Insurance Co., 166 F.3d 214, 223 (3d. Cir. 1999)). Where it is not evident from the complaint itself whether or not the jurisdictional limit has been met, the Court may make an independent appraisal of the claim and consider additional information. Meritcare Inc. v. St. Paul Mercury Insurance Co., 166 F.3d 214, 223 (3d Cir. 1999).

There is no question in this action that the parties are citizens of different states. In order to decide Plaintiff's motion to remand, the Court must only determine whether or not the amount in controversy has been met. The complaint in the instant case makes no reference to an amount in controversy. Defendant's notice of removal merely asserts that the amount in controversy exceeds \$75,000 without elucidation. Therefore, the Court will look beyond the complaint and the notice of removal in order to determine whether or not the defendant has met his burden of determining that the amount in controversy exceeds \$75,000.

In response to Plaintiff's motion to remand, Defendant asserts two grounds on which it bases its claim that the amount in controversy exceeds \$75,000. Initially, Defendant relies on the fact that Plaintiff seeks compensatory damages for a delay in entering law school and, thus, the legal profession. In order to demonstrate that such a claim, if successful, could result in damages in excess of \$75,000, Defendant has provided the Court with a newspaper article which discusses salary increases for several large, Philadelphia law firms, showing that starting salaries at these firms exceed \$75,000 per year. In addition, Defendant relies on the fact that Plaintiff's complaint contains a demand for punitive damages. Although Defendant asserts that Plaintiff would not be entitled to punitive damages if this case were to be tried under Massachusetts law, Defendant

asserts that Plaintiff could make such a claim for punitive damages if Pennsylvania law were to be applied.

Attached to Plaintiff's motion to remand is an affidavit in which Plaintiff's counsel asserts that the value of Plaintiff's claims does not and cannot exceed \$75,000. Plaintiff's reply brief goes further and explicitly waives Plaintiff's right to damages exceeding \$75,000 and asserts that Plaintiff will not accept damages in excess of the jurisdictional amount, even if awarded. Plaintiff also offers to execute a stipulation to that effect.

While it is generally true that a plaintiff cannot defeat jurisdiction by a stipulation or an amendment which reduces the amount in controversy, the United States Court of Appeals for the Third Circuit has recognized that a stipulation limiting damages may be considered by the court as "clarifying rather than amending" the complaint where, as here, the "complaint is ambiguous as to the damages asserted and the controversy seems small." Angus v. Shiley Inc., 989 F.2d 142, 145 n.3 (3d Cir. 1993); see also Meritcare Inc. v. St. Paul Mercury Insurance Co., 166 F.3d 214, 223 (3d Cir. 1999). Conversely, if the plaintiff refuses to stipulate to damages under the jurisdictional amount when asked to do so by the defendant, the Court can find that the defendant's burden of establishing the amount in controversy has been satisfied. See Johnson v. Costco Wholesale, No. Civ. A. 99-cv-3576, 1999 WL 740690 (E.D.Pa. Sept. 22, 1999).

Plaintiff's counsel has asserted in a sworn affidavit that the amount in controversy in this matter does not exceed \$75,000 and has offered to execute a stipulation waiving any damages in excess of \$75,000 if awarded by a court. The Court finds Plaintiff's stipulation that damages do not exceed the jurisdictional amount controlling in this matter. See, e.g. Gottehrer v. State Farm Ins. Co., No Civ. A. 96-1663, 1996 WL 21808 at \*1 (E.D.Pa. Apr. 30, 1996). Plaintiff's

stipulation properly clarifies a complaint that is ambiguous as to the damages sought rather than impermissibly amending a complaint which initially satisfied the jurisdictional amount in order to defeat removal. See Angus v. Shiley, 989 F.2d 142, 145 (3d Cir, 1993).

The amount in controversy is an element of the Court's subject matter jurisdiction and, thus, the Court has the obligation to remand the case if it appears, at any time before final judgment is entered, that the amount in controversy never exceeded \$75,000. See Meritcare, 166 F.3d at 217. A "distinction must be made ... between subsequent events that change the amount in controversy and subsequent revelations that, in fact, the required amount was or was not in controversy at the commencement of the action." Meritcare, 166 F.3d at 217-218 (quoting State Farm Mutual Automobile Ins. Co. v. Powell, 87 F.3d 93, 97 (3d Cir. 1996)) (alterations in original). Plaintiff's stipulation that his complaint does not exceed the amount in controversy is an example of the latter and, therefore, is properly relied upon by this Court. See Meritcare, 166 F.3d at 222-223 (finding remand to state court necessary where the plaintiff conceded in a pretrial statement that his damages never exceeded the requisite jurisdictional amount).

Defendant has come forward with no evidence to counter Plaintiff's assertion that the amount in controversy in this action does not exceed the jurisdictional amount of \$75,000. Because Defendant bears the burden of demonstrating that the amount in controversy has been met and because the removal statutes are to be strictly construed and all doubts resolved in favor of remand, this Court has determined that Defendant Brandeis University has not met its burden of demonstrating that federal jurisdiction exists over the instant action.

Having made this determination, the Court must remand Plaintiff's complaint to state court pursuant to 28 U.S.C. § 1447. Section 1447(c) states, in relevant part: "If at any time

before final judgment it appears that the district court lacked subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). Therefore, the Court finds that it does not have subject matter jurisdiction over Plaintiff's claims and remands this action to the Court of Common Pleas of Philadelphia County. The resolution of Plaintiff's motion to remand renders consideration of the pending motions relating to personal jurisdiction and venue unnecessary.

Finally, Morris asks for an award of costs, expenses and attorney's fees incurred by reason of Defendant's removal. Under 28 U.S.C. § 1447(c) the Court, in entering a remand order, has discretion to make an award of costs and attorney's fees. See Mints v. Education Testing Serv., 99 F.3d 1253, 1260 (3d Cir. 1996). Section 1447(c) provides that "[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). A finding of bad faith is not necessary for a court to make such an award. Mints v. Educational Testing Serv., 99 F.3d 1253, 1260 (3d Cir. 1996). The Court finds that Defendant's removal petition in the instant action was not "frivolous" or "insubstantial." Mints, 99 F.3d at 1261; see also Thomas v. Hanley, No. Civ. A. 97-2443, 1997 WL 563402 at \*7 (E.D.Pa. Sept. 2, 1997). The Court also finds that an award of costs and fees is not warranted in this case since the "nonremovability of this action was not obvious." Scarpone v. Jesburger, Civ. A. No. 86-6926, 1987 WL 12857 at \*3 (E.D.Pa. June 22, 1987).

Thus, the Court will grant Plaintiff's motion to remand. The Court will deny Plaintiff's request for an award of costs and fees. The Court will dismiss as moot the pending motions concerning personal jurisdiction and venue.

An appropriate Order follows.



**IN THE UNITED STATES DISTRICT COURT FOR  
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**DREW A. MORRIS**

**v.**

**BRANDEIS UNIVERSITY**

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**CIVIL ACTION  
NO. 99-2642**

**ORDER**

AND NOW, this        day of October, 1999; Defendant Brandeis University having removed this action from the Court of Common Pleas of Philadelphia County; Plaintiff Drew A. Morris having filed a motion to remand this action to that court; Defendant having filed a motion to dismiss Plaintiff's complaint, pursuant to Fed. R. Civ. P. 12(b)(2), for lack of personal jurisdiction, or, in the alternative, to transfer venue, pursuant to 28 U.S.C. § 1404(a); Plaintiff having filed a motion seeking discovery on the issue of personal jurisdiction; Defendant having filed a motion seeking to have the Court stay its decision on the issue of jurisdictional discovery pending the Court's resolution of Defendant's motion to transfer venue; these motions and the responses thereto being presently before the Court; for the reasons stated in this Court's Memorandum of this same date, the Court having found that remand is necessary pursuant to 28 U.S.C. § 1447(c) because this Court does not have subject matter jurisdiction over Plaintiff's claims in that Defendant has not demonstrated that the amount in controversy exceeds \$75,000;

**IT IS ORDERED** that Plaintiff's motion to remand this action to the Court of Common Pleas of Philadelphia County (Doc. No. 2) is **GRANTED**;

**IT IS FURTHER ORDERED** that Plaintiff's request for an award of costs and fees

incurred in this Court by reason of the removal is **DENIED**;

**IT IS FURTHER ORDERED** that Defendant's motion to dismiss Plaintiff's complaint for lack of personal jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(2), or, in the alternative, to transfer venue, pursuant to 28 U.S.C. § 1404(a), (Doc. No. 6) is **DISMISSED AS MOOT**;

**IT IS FURTHER ORDERED** that Plaintiff's motion for leave to take discovery on the issues of jurisdiction and venue (Doc. No. 12) is **DISMISSED AS MOOT**;

**IT IS FURTHER ORDERED** that Defendant's request to stay decision on jurisdictional discovery until after consideration of the motion to transfer venue (Doc. No. 13) is **DISMISSED AS MOOT**;

**IT IS FURTHER ORDERED** that the Clerk of the Court shall mail a certified copy of this Order to the Prothonotary of the Court of Common Pleas of Philadelphia County pursuant to 28 U.S.C. § 1447(c).

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RAYMOND J. BRODERICK, J.